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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

19 OWEN DIAZ,
20 Plaintiff,
21 v.
22 TESLA, INC. d/b/a TESLA MOTORS, INC.,
23 Defendant.

Case No. 3:17-cv-06748-WHO

**DEFENDANT TESLA, INC.'S
ADMINISTRATIVE MOTION TO FILE
VAUGHN DOCUMENTS AND TESLA'S
RESPONSE TO PLAINTIFF'S NOTICE
OF NEW EVIDENCE UNDER SEAL**

Judge: Hon. William H. Orrick

*[Filed concurrently with Defendant's
Response to Plaintiff's Notice of New
Evidence, Declaration of Jessica Quon-Vaili,
and Proposed Order]*

Pursuant to Civil Local Rules 7-11 and 79-5 of the Northern District of California, as well as Judge Orrick's Standing Order regarding administrative motions to seal, Defendant Tesla, Inc. dba Tesla Motors, Inc. ("Tesla"), submits this Administrative Motion to File Under Seal and respectfully requests that the Court issue an Order certain portions of Defendant's Response to Plaintiff's Notice of New Evidence ("Defendant's Response") and Exhibits A-E to the Declaration of Daniel C. Posner ("Posner Decl.") in Support of Defendant's Response. This motion is based on the below memorandum of points and authorities. Tesla identifies the following documents and portions of documents it proposes be sealed:

Document	Portion to be Sealed	Designating Party
Defendant's Response to Plaintiff's Notice of New Evidence	The following page and line numbers: 1:6-7; 1:10-13; 1:18-19; 2:4-8; 3:15; 3:18-4:12; 4:16-19; 4:27-5:1.	Tesla
Posner Decl. Ex. A - TSLA(VGN)26869	All	Tesla
Posner Decl. Ex. B - TSLA(VGN)27092	All	Tesla
Posner Decl. Ex. C - TSLA(VGN)27095	All	Tesla
Posner Decl. Ex. D - TSLA(VGN)26870	All	Tesla
Posner Decl. Ex. E - TSLA(VGN)27094	All	Tesla

TESLA'S DOCUMENTS SHOULD BE SEALED

The Exhibits identified above ("*Vaughn* Documents") were previously designated as "CONFIDENTIAL" pursuant to the stipulated Protective Order in the California-state court matter of *Vaughn et al. v. Tesla, Inc.*, Alameda Superior Court No. RG17882082 ("*Vaughn*"). (Dkt. 485-1 ("*Nunley Decl.*"), ¶ 4, Ex. 1.) The Protective Order prohibits use of the *Vaughn* Documents for "any purpose" beyond litigation in the *Vaughn* matter. (Protective Order, at § IV(a).) Under the terms of the Protective Order, a document designated as "CONFIDENTIAL," such as the *Vaughn*

1 Documents, shall maintain its designation unless it “is voluntarily withdrawn by the Producing or
 2 Designating party” or the Alameda Superior Court “issues an order modifying or removing such
 3 designation.” (*Id.* at § III B.)

4 Pursuant to the Court’s order (Dkt. 486), Tesla is filing unredacted copies of the *Vaughn*
 5 Documents and an accompanying Response to Plaintiff’s Notice of New Evidence which discusses
 6 and describes the contents of the *Vaughn* Documents. Tesla is disclosing the *Vaughn* Documents
 7 to the Court for the narrow purpose of responding to Plaintiff’s Notice and complying with the
 8 Court’s Order. Tesla has not voluntarily withdrawn the designation of the *Vaughn* Documents and
 9 there is no order from the Alameda Superior Court removing their designation. Accordingly, the
 10 *Vaughn* Documents and the portions of Tesla’s Response to Plaintiff’s Notice that reference or
 11 describe them expressly or by implication should remain confidential and under seal under the
 12 governing Protective Order.¹

13 While the *Vaughn* Documents should remain sealed under the Protective Order alone,
 14 additional good cause exists to file them under seal as they are independently qualified to be
 15 protected from being filed in the public record because they contain private information of third
 16 parties that is protected from public disclosure by the California Constitution, *Foltz v. State Farm*
 17 *Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1137 (9th Cir. 2003) (reasoning sensitive and private
 18 information of third parties to a litigation ordinarily should be sealed to protect the non-party from
 19 improper disclosure); *see also* Cal. Const. Art. I, sec. 1, as well as sensitive employer investigation
 20 information, *Genetech, Inc. v. JHL Biotech, Inc.*, 2019 WL 1045911 (N.D. Cal. Mar. 5, 2019)
 21 (sealing documents regarding an internal investigation dealing with employee misconduct and
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 27 ¹ Out of an abundance of caution and to avoid an inadvertent disclosure of information
 28 considered confidential in *Vaughn*, Tesla seeks to seal portions of the Response that, while
 discussing other public matters, may effectively reveal the contents of the *Vaughn* Documents by
 implication or comparison.

1 reasoning that such documents and information would reveal to the public the company's procedures
2 and tools when conducting sensitive and internal investigations).

3
4 **CONCLUSION**

5 For the reasons set forth above, Tesla respectfully requests that the Court grant Tesla's
6 motion and enter an Order sealing the documents identified above.

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9 DATED: August 15, 2023

By: /s/ Daniel C. Posner

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